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W.P.No.3672 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.3672 of 2020

G.Madhu

... Petitioner

Vs.

The Management,
ASIA Tobacco Company Limited,
No.35, Rajaji Nagar,
SIPCOT, Hosur - 635 126.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records from the Labour Court, Salem relating to the impugned Award, dated 07.02.2011 in I.D.No.96 of 2002 and quash the same and direct the Respondent Management to re-instate the petitioner into service with full back wages, continuity of service and other attendant benefits.

For Petitioner : Ms.A.Meena

For Respondent : Mr.S.Sai Prasad for
M/s.Said Raaj Associates



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ORDER

The Writ Petitioner was a casual Labourer of the Respondent / Management and he was paid salary of Rs.32/- per day. According to the petitioner, he was not given employment from 27.08.1999 onwards. Though the petitioner sent a letter dated 18.10.2000 to the respondent/Management requesting them to give him employment, the same was not considered. Therefore, he filed a petition under Section 2 A (2) of the Industrial Disputes Act before the Presiding Officer, Labour Court, Salem in I.D.No.96/2002. The respondent/Management filed a detailed counter before the Labour Court, Salem in which it has been stated that the Writ Petitioner was not working continuously for 480 days in 24 calendar months. The Labour Court, Salem, after analysing the oral and documentary evidence adduced by both sides, dismissed the petition filed by the Writ Petitioner vide its orders dated 07.02.2011. Aggrieved over the same, the present Writ petition is filed.

2. Ms.A.Meena, learned counsel for the Writ Petitioner contended that the Labour Court, Salem had not taken into consideration



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the period of service rendered by the Writ Petitioner and that he was orally terminated from service on 27.08.1999. In such circumstances, the Award passed by the Labour Court, Salem is erroneous.

3. Per contra, Mr.S.Sai Prasad, learned counsel for the respondent/management contended that the present Writ Petition is filed with an enormous delay of 9 years and therefore the present Writ Petition should be dismissed on the ground of delay and laches. He also relied on the decision of the Hon'ble Supreme Court in ***Chennai Metropolitan Water Supply and Sewerage Board and Ors. Vrs. T.T.Murali Babu*** reported in ***Manu/SC/0090/2014*** and contended that the doctrine of delay and laches should not be lightly brushed aside and that the Writ Court is required to weigh the explanation offered and the acceptability of the same. He therefore contended that it is a duty of the Constitutional Court to protect the rights of the citizens and simultaneously it has to keep itself alive to the primary principle when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court at his own leisure or pleasure, the Court would be under legal



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obligation to scrutinize whether the lis at a belated stage should be entertained or not. His another contention is that the Writ Petitioner/workman had not proved that he was continuously working for 480 days in 24 calendar months. Therefore, he is not entitled to make the claim under Section 2A(2) of the Industrial Disputes Ac. According to him, the findings rendered by the Labour Court, Salem are not perverse and this Court need not invoke the provisions of Article 226 of the Constitution of India to interfere with the same.

4. It is an admitted fact that the Writ Petitioner was only a casual labourer and he has not adduced any evidence before the Labour Court that he was working continuously for a period of 480 days from 11.11.1996 to 12.03.1999 for 24 calendar months, even though the initial burden lies on the petitioner. More over, the termination of service of the workman is excluded from the retrenchment under Section 25F of the Industrial Disputes Act. The termination of service of a daily wage would not amount to retrenchment and therefore he cannot claim any benefit under Section 2A(2) of the Industrial Disputes Act. Though it is stated



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that the Limitation Act would not apply to the proceedings of the Industrial Disputes Act, in the instant case, there is an enormous delay of 9 years in filing the Writ petition, challenging the Award passed in the year 2011. In the decision in **Chennai Metropolitan Water Supply and Sewerage Board case** cited supra, the Hon'ble Supreme Court had held thus:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously to it is to keep itself alive the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster



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for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant-a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes Injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the Respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of Justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give



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indulgence to such indolent persons-who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

5. In the instant case, the Writ Petitioner had not explained the enormous delay in filing the present Writ Petition. As already observed, he has also not discharged his burden of proof that he was continuously working for 480 days in 24 calendar months.

6. In the circumstances, the Award passed by the Labour Court, Salem, is perfectly in order and I do not find any reason to interfere with the same. Accordingly, the Writ Petition is dismissed. No costs.

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Index: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.

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To

The Labour Court, Salem.

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